

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 17, 2011

SENATE BILL

No. 297

Introduced by Senator Cannella
(Coauthor: Senator La Malfa)
(Coauthor: Assembly Member Olsen)

February 14, 2011

An act to amend Section 399.12 of, and to repeal Section 399.12.5 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 297, as amended, Cannella. ~~Renewable energy resources:~~ *energy resources:* hydroelectric generation.

Existing law establishes the California Renewables Portfolio Standard Program, which requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources, as defined, for all retail sellers, as defined, to achieve the targets and goals of the program. The existing definition of an eligible renewable energy resource includes small hydroelectric generation facilities of 30 megawatts or less that meet specified criteria.

This bill would revise the definition of an eligible renewable energy resource to include a hydroelectric generation facility of any size, and remove other restrictions regarding which hydroelectric generation facilities meet the definition of an eligible renewable energy resource. The bill would also make conforming changes.

This bill would incorporate certain changes in Section 399.12 of the Public Utilities Code, proposed by SB 2 of the First Extraordinary Session, to be operative only if SB 2 and this bill are both chaptered

and become effective on or before January 1, 2012, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 399.12 of the Public Utilities Code is
2 amended to read:

3 399.12. For purposes of this article, the following terms have
4 the following meanings:

5 (a) “Conduit hydroelectric facility” means a facility for the
6 generation of electricity that uses only the hydroelectric potential
7 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other
8 manmade conduit that is operated to distribute water for a
9 beneficial use.

10 (b) “Delivered” and “delivery” have the same meaning as
11 provided in subdivision (a) of Section 25741 of the Public
12 Resources Code.

13 (c) (1) Except as otherwise provided in paragraph (2) or (3),
14 “eligible renewable energy resource” means an electrical generating
15 facility that meets the definition of an “in-state renewable
16 electricity generation facility” in Section 25741 of the Public
17 Resources Code.

18 (2) A hydroelectric generation facility of any size, including a
19 conduit hydroelectric facility, is an eligible renewable energy
20 resource, if the facility meets the criteria in paragraph (2) of
21 subdivision (b) of Section 25741.

22 (3) A facility engaged in the combustion of municipal solid
23 waste shall not be considered an eligible renewable energy resource
24 unless it is located in Stanislaus County and was operational prior
25 to September 26, 1996.

26 (d) “Procure” means to acquire through ownership or contract.
27 For purposes of meeting the renewables portfolio standard
28 procurement requirements, a retail seller or local publicly owned
29 electric utility may procure either delivered electricity generated
30 by an eligible renewable energy resource that it owns or for which
31 it has entered into an electricity purchase agreement. Nothing in
32 this article is intended to imply that the purchase of electricity from
33 third parties in a wholesale transaction is the preferred method of

1 fulfilling a retail seller's obligation to comply with this article or
2 the obligation of a local publicly owned electric utility to meet its
3 renewables portfolio standard implemented pursuant to Section
4 387.

5 (e) (1) "Renewable energy credit" means a certificate of proof
6 associated with the generation of electricity from an eligible
7 renewable energy resource, issued through the accounting system
8 established by the Energy Commission pursuant to Section 399.13,
9 that one unit of electricity was generated and delivered by an
10 eligible renewable energy resource.

11 (2) "Renewable energy credit" includes all renewable and
12 environmental attributes associated with the production of
13 electricity from the eligible renewable energy resource, except for
14 an emissions reduction credit issued pursuant to Section 40709 of
15 the Health and Safety Code and any credits or payments associated
16 with the reduction of solid waste and treatment benefits created
17 by the utilization of biomass or biogas fuels.

18 (3) Electricity generated by an eligible renewable energy
19 resource attributable to the use of nonrenewable fuels, beyond a
20 de minimis quantity used to generate electricity in the same process
21 through which the facility converts renewable fuel to electricity,
22 shall not result in the creation of a renewable energy credit. The
23 Energy Commission shall set the de minimis quantity of
24 nonrenewable fuels for each renewable energy technology at a
25 level of no more than 2 percent of the total quantity of fuel used
26 by the technology to generate electricity. The Energy Commission
27 may adjust the de minimis quantity for an individual facility, up
28 to a maximum of 5 percent, if it finds that all of the following
29 conditions are met:

30 (A) The facility demonstrates that the higher quantity of
31 nonrenewable fuel will lead to an increase in generation from the
32 eligible renewable energy facility that is significantly greater than
33 generation from the nonrenewable fuel alone.

34 (B) The facility demonstrates that the higher quantity of
35 nonrenewable fuels will reduce the variability of its electrical
36 output in a manner that results in net environmental benefits to the
37 state.

38 (C) The higher quantity of nonrenewable fuel is limited to either
39 natural gas or hydrogen derived by reformation of a fossil fuel.

(f) “Renewables portfolio standard” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(g) “Retail seller” means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. This paragraph does not impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) “Retail seller” does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing electricity consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electric utility.

SEC. 1.5. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:

(a) “Balancing authority” means the responsible entity that integrates resource plans ahead of time, maintains

1 *load-interchange generation balance within a balancing authority*
2 *area, and supports interconnection frequency in real time.*

3 (b) *“Balancing authority area” means the collection of*
4 *generation, transmission, and loads within the metered boundaries*
5 *of the area within which the balancing authority maintains the*
6 *electrical load-resource balance.*

7 (c) *“California balancing authority” is a balancing authority*
8 *with control over a balancing authority area primarily located in*
9 *this state and operating for retail sellers and local publicly owned*
10 *electric utilities subject to the requirements of this article and*
11 *includes the Independent System Operator (ISO) and a local*
12 *publicly owned electric utility operating a transmission grid that*
13 *is not under the operational control of the ISO. A California*
14 *balancing authority is responsible for the operation of the*
15 *transmission grid within its metered boundaries which may not*
16 *be limited by the political boundaries of the State of California.*

17 (a)

18 (d) *“Conduit hydroelectric facility” means a facility for the*
19 *generation of electricity that uses only the hydroelectric potential*
20 *of an existing pipe, ditch, flume, siphon, tunnel, canal, or other*
21 *manmade conduit that is operated to distribute water for a*
22 *beneficial use.*

23 ~~(b) “Delivered” and “delivery” have the same meaning as~~
24 ~~provided in subdivision (a) of Section 25741 of the Public~~
25 ~~Resources Code.~~

26 ~~(c) “Eligible~~

27 ~~(e) (1) Except as otherwise provided in paragraph (3) or (4),~~
28 ~~“eligible renewable energy resource” means an electrical~~
29 ~~generating facility that meets the definition of an “in-state~~
30 ~~renewable electricity a “renewable electrical generation facility”~~
31 ~~in Section 25741 of the Public Resources Code, subject to the~~
32 ~~following limitations:~~

33 ~~(1) (A) An existing small hydroelectric generation facility of~~
34 ~~30 megawatts or less shall be eligible only if a retail seller or local~~
35 ~~publicly owned electric utility owned or procured the electricity~~
36 ~~from the facility as of December 31, 2005. A new hydroelectric~~
37 ~~facility is not an eligible renewable energy resource if it will cause~~
38 ~~an adverse impact on instream beneficial uses or cause a change~~
39 ~~in the volume or timing of streamflow.~~

~~(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.~~

(2) A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, shall be certified as an eligible renewable energy resource by the Energy Commission pursuant to this article, if the facility is a “renewable electrical generation facility” as defined in Section 25741 of the Public Resources Code.

(3) A hydroelectric generation facility of any size, including a conduit hydroelectric facility, is an eligible renewable energy resource, if the facility meets the criteria in paragraph (2) of subdivision (b) of Section 25741.

~~(2)~~

(4) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable energy resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

~~(d) “Procure” means to acquire through ownership or contract. For purposes of meeting the renewables portfolio standard procurement requirements, a retail seller or local publicly owned electric utility may procure either delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller’s obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.~~

(f) “Procure” means to acquire through ownership or contract.

(g) “Procurement entity” means any person or corporation authorized by the commission to enter into contracts to procure

1 *eligible renewable energy resources on behalf of customers of a*
2 *retail seller pursuant to subdivision (f) of Section 399.13.*

3 ~~(e)~~

4 (h) (1) “Renewable energy credit” means a certificate of proof
5 associated with the generation of electricity from an eligible
6 renewable energy resource, issued through the accounting system
7 established by the Energy Commission pursuant to Section ~~399.13~~
8 399.25, that one unit of electricity was generated and delivered by
9 an eligible renewable energy resource.

10 (2) “Renewable energy credit” includes all renewable and
11 environmental attributes associated with the production of
12 electricity from the eligible renewable energy resource, except for
13 an emissions reduction credit issued pursuant to Section 40709 of
14 the Health and Safety Code and any credits or payments associated
15 with the reduction of solid waste and treatment benefits created
16 by the utilization of biomass or biogas fuels.

17 (3) ~~No~~ (A) An electricity generated by an eligible renewable
18 energy resource attributable to the use of nonrenewable fuels,
19 beyond a de minimis quantity used to generate electricity in the
20 same process through which the facility converts renewable fuel
21 to electricity, shall *not* result in the creation of a renewable energy
22 credit. The Energy Commission shall set the de minimis quantity
23 of nonrenewable fuels for each renewable energy technology at a
24 level of no more than 2 percent of the total quantity of fuel used
25 by the technology to generate electricity. The Energy Commission
26 may adjust the de minimis quantity for an individual facility, up
27 to a maximum of 5 percent, if it finds that all of the following
28 conditions are met:

29 ~~(A)~~

30 (i) The facility demonstrates that the higher quantity of
31 nonrenewable fuel will lead to an increase in generation from the
32 eligible renewable energy facility that is significantly greater than
33 generation from the nonrenewable fuel alone.

34 ~~(B)~~

35 (ii) The facility demonstrates that the higher quantity of
36 nonrenewable fuels will reduce the variability of its electrical
37 output in a manner that results in net environmental benefits to the
38 state.

39 ~~(C)~~

1 (iii) The higher quantity of nonrenewable fuel is limited to either
2 natural gas or hydrogen derived by reformation of a fossil fuel.

3 (B) *Electricity generated by a facility engaged in the combustion*
4 *of municipal solid waste shall not result in the creation of a*
5 *renewable energy credit unless the facility meets the requirements*
6 *of paragraph (2) of subdivision (e).*

7 ~~(F)~~

8 (i) “Renewables portfolio standard” means the specified
9 percentage of electricity generated by eligible renewable energy
10 resources that a retail seller *or a local publicly owned electric*
11 *utility* is required to procure pursuant to this article ~~or the obligation~~
12 ~~of a local publicly owned electric utility to meet its renewables~~
13 ~~portfolio standard implemented pursuant to Section 387.~~

14 ~~(g)~~

15 (j) “Retail seller” means an entity engaged in the retail sale of
16 electricity to end-use customers located within the state, including
17 any of the following:

18 (1) An electrical corporation, as defined in Section 218.

19 (2) A community choice aggregator. The commission shall
20 institute a rulemaking to determine the manner in which a
21 community choice aggregator will participate in the renewables
22 portfolio standard program subject to the same terms and conditions
23 applicable to an electrical corporation.

24 (3) An electric service provider, as defined in Section 218.3,
25 for all sales of electricity to customers beginning January 1, 2006.
26 The commission shall institute a rulemaking to determine the
27 manner in which electric service providers will participate in the
28 renewables portfolio standard program. The electric service
29 provider shall be subject to the same terms and conditions
30 applicable to an electrical corporation pursuant to this article.
31 ~~Nothing in this~~ *This paragraph shall does not* impair a contract
32 entered into between an electric service provider and a retail
33 customer prior to the suspension of direct access by the commission
34 pursuant to Section 80110 of the Water Code.

35 (4) “Retail seller” does not include any of the following:

36 (A) A corporation or person employing cogeneration technology
37 or producing electricity consistent with subdivision (b) of Section
38 218.

1 (B) The Department of Water Resources acting in its capacity
2 pursuant to Division 27 (commencing with Section 80000) of the
3 Water Code.

4 (C) A local publicly owned electric utility.

5 (k) “WECC” means the Western Electricity Coordinating
6 Council of the North American Electric Reliability Corporation,
7 or a successor to either corporation.

8 SEC. 2. Section 399.12.5 of the Public Utilities Code is
9 repealed.

10 SEC. 3. Section 1.5 of this bill incorporates amendments to
11 Section 399.12 of the Public Utilities Code proposed by this bill
12 and SB 2 of the First Extraordinary Session. It shall only become
13 operative if (1) both bills are enacted and become effective on or
14 before January 1, 2012, (2) each bill amends Section 399.12 of
15 the Public Utilities Code, and (3) this bill is enacted after SB 2 of
16 the First Extraordinary Session, in which case Section 399.12 of
17 the Public Utilities Code, as amended by SB 2 of the First
18 Extraordinary Session, shall remain operative only until the
19 operative date of this bill, at which time Section 1.5 of this bill
20 shall become operative, and Section 1 of this bill shall not become
21 operative.